IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4467 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARPALSING DIGVIJAYSING JHALA

Versus

COMMISSIONER OF POLICE

Appearance:

MR AKSHAY H MEHTA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

Leave granted to the petitioner to amend the petition as per the draft amendment tendered today. The petitioner to carry out the amendment forthwith.

#. Heard Mr.Akshay H. Mehta, learned advocate for the

petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 29-5-99 passed by respondent No. 1 - The Commissioner of Police, Rajkot against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicate that four prohibition cases are registered against the petitioner in between 13-7-98 to 30-4-99. That in each case, the country made liquor along with vehicles have been seized from the possession of the petitioner / detenu. That two of the cases are pending for trial in the Court while the case registered vide C.R. No : 10/99 and 122/99 are pending for investigation. Over and above, that two witnesses have given their statement dated 27th May, 1999 and indicated the bootlegging activities of the petitioner and alleged incidents dated 27-4-99 and 4-4-99 respectively. That on the basis of the said material, the respondent No. 1 - The Commissioner of Police, Rajkot as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail before passing the impugned order.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that vide para 8 of the grounds of detention, the detaining authority has observed the fact that despite the order of grant of bail to the petitioner, the petitioner has remained in judicial custody as bail could not be furnished. However, the petitioner has been repeatedly claiming the bail and having got himself released on bail, is likely to continue his anti social activities. The said observation itself suggests non application of mind on the part of the detaining authority. It further clearly suggests that the impugned order has been passed on mere apprehension rather than the fact and as such, it is difficult to uphold the said order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 29-5-99 passed by respondent No. 1 - The Commissioner of Police, Rajkot against the petitioner is hereby quashed and set aside. The petitioner - HARPALSING DIGVIJAYSING JHALA is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 1-2-2000 [A.K.Trivedi, J.]

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